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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DALJIT SINGH,	CIV- F-05-0611 AWI WMW HC
Petitioner,	
ý	ORDER GRANTING MOTION TO
v.	DISMISS AND CLOSING CASE
Ý	DUE TO PLAINTIFF'S
MICHAEL CHERTOFF, SECRETARY	VOLUNTARY DISMISSAL
OF HOMELAND SECURITY,	
, in the second of the second	(Document #5)
Respondent.	
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Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On September 23, 2005, Petitioner filed a motion to dismiss his petition.

Rule 41(a) of the Federal Rules of Civil Procedure allows a Plaintiff to automatically dismiss his case without an order of the court by filing a notice of dismissal at any time before an answer is filed. In <u>Wilson v. City of San Jose</u>, the Ninth Circuit explained:

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is required. Id. The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for the same cause against the same defendants. Id. (citing McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal

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leaves the parties as though no action had been brought. <u>Id.</u> Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). No answer to the petition and no motion for summary judgment has been filed in this action. Because Petitioner has exercised his right to voluntarily dismiss this action under Rule 41(a)(1), this case is over. <u>See Wilson</u>, 111 F.3d at 692. Therefore, IT IS HEREBY ORDERED that: 1. Plaintiff's motion is GRANTED; and 2. The Clerk of the Court is DIRECTED to close this case in light of Plaintiff's Rule 41(a)(1) Voluntary Dismissal. IT IS SO ORDERED. Dated: September 27, 2005 /s/ Anthony W. Ishii 0m8i78 UNITED STATES DISTRICT JUDGE